

**OFFICE OF THE HEARING EXAMINER  
CITY OF RENTON**

**Minutes**

OWNER: Kolin B. Taylor  
KBS III, LLC  
12320 NE 8<sup>th</sup> Street, Ste. 100  
Bellevue, WA 98005

APPLICANT/CONTACT: Wayne Potter  
Barghausen Consulting Engineer  
18215 72<sup>nd</sup> Avenue S  
Kent, WA 98032

Cavalla Preliminary Plat  
File No.: LUA 09-097, PP, ECF

LOCATION: Southeast of 162<sup>nd</sup> Avenue SE and SE 137<sup>th</sup> Place

SUMMARY OF REQUEST: Requesting an amended Preliminary Plat and SEPA review approval of a 9.40 acre site to be subdivided into 49 lots for single-family residential with Tracts for stormwater and joint use driveways.

SUMMARY OF ACTION: Development Services Recommendation: Approve subject to conditions.

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on October 6, 2009.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

**MINUTES**

*The following minutes are a summary of the October 13, 2009 hearing.  
The legal record is recorded on CD.*

The hearing opened on Tuesday, October 13, 2009, at 9:02 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<b><u>Exhibit No. 1:</u></b> Yellow file containing the original application, proof of posting, proof of publication and other documentation pertinent to this request.	<b><u>Exhibit No. 2:</u></b> Vicinity Map
<b><u>Exhibit No. 3:</u></b> Preliminary Plat Plan	<b><u>Exhibit No. 4:</u></b> Landscape Plan
<b><u>Exhibit No. 5:</u></b> Road Plan	<b><u>Exhibit No. 6:</u></b> Aerial Photograph
<b><u>Exhibit No. 7:</u></b> Tree Inventory	<b><u>Exhibit No. 8:</u></b> Picture of Proposed Trees for storm pond area (7 sheets)
<b><u>Exhibit No. 9:</u></b> Access Agreement between Threadgill, Liberty Gardens and Cavalla.	<b><u>Exhibit No. 10:</u></b> Copy of King County Codes regarding Transfer of Development Rights
<b><u>Exhibit No. 11:</u></b> Two Density Credit Transfer agreements between KBS and Respective Owners	<b><u>Exhibit No. 12:</u></b> Gwendolyn High Testimony
<b><u>Exhibit No. 13:</u></b> Prior Preliminary Plat with 38 Lots	<b><u>Exhibit No. 14:</u></b> New Condition #1

Rocale Timmons stated that this application was submitted to King County DDES in early 2006, since that time the property was annexed into the City of Renton. It is vested to King County's R-4 Development Standards. This plat will also be subject to the City of Renton's procedures. The applicant proposed 49 single family lots on 9.40 acres. There are two existing parcels and one existing single family residence that would be removed. The gross density would be approximately 5.21 dwelling units per acre.

The interior lots would average 4300 square feet and the exterior lots would average 6000 square feet. Proposed access to the site would be via 162<sup>nd</sup> Avenue SE, which abuts the site to the west and then 164<sup>th</sup> Avenue SE located on the eastern portion of the site. This would be a proposed dedication provided by the applicant, which is an extension of 164<sup>th</sup> Avenue SE.

The Environmental Review Committee issues a Determination of Non-Significance – Mitigated with two mitigation measures. No appeals were filed.

This project does comply with King County's Comprehensive Plan designation. In King County's R-4 zone, the density allowed is 4 dwelling units per gross acre, this allows a maximum density of up to 6 dwelling units per acre. This excess of the base density is allowed for the use of Transfer of Development Rights, which the applicant is pursuing per Chapter 21a37 of the King County Code. The applicant has proposed 5.21 dwelling units per gross acre, which is an 11 lot increase from the base density that would have been allowed in the zone.

A Transfer of Development Rights allows for the transfer of development rights from another area outside of the urban growth boundary. It is basically the development rights that a potential property could have had to use to develop. Eleven lots that could have been developed somewhere else could be transferred to this development. The applicant has provided a Purchase and Sell Agreement which is the first step. At Preliminary Plat approval, the applicant would be required to provide a Purchase and Sell Agreement. Staff has requested that the first

condition be revised, rather than just requesting a Purchase and Sell or the actual Transfer of Development Rights documentation, they would be asking that the applicant perform all steps and complete all documentation necessary as required by King County and the City of Renton in order to process the transfer of Development Rights properly for this subject plat only.

Development standards of King County requires a minimum of a 30-foot lot width, no depth or size are required. The applicant has proposed different lot variations within the site. All lots exceed the 30-foot requirement. King County Code further requires a 10-foot front yard setback for the primary structure and a 20-foot setback for the garage. All side and rear yards require only a 5-foot setback. The applicant, however, has proposed a 15-foot setback for the primary structure on the interior lots. In the right-of-way the applicant has also provided an 8-foot landscape strip in addition to a 5-foot public sidewalk. The lots along the exterior would have a 20-foot setback for the primary structure and 25-foot setback for the garage.

The building standards for the site were stated incorrectly in the Staff Report. It is noted that 55% is the impervious surface coverage in the report, however for the use of TDR, the applicant is able to utilize the R-6 development standards which allows 70% impervious surface coverage for each lot. The building height would be 35-feet for each single family residence.

The proposed landscape plan includes a 10-foot landscape easement parallel to 162<sup>nd</sup> Avenue SE and 164<sup>th</sup> Avenue that would be easements on private property with significant landscaping and a good neighbor fence which would be modulated along 164<sup>th</sup> Avenue SE. There is at least 20-feet of landscaping along 162<sup>nd</sup> and 164<sup>th</sup> from the back of the curb to the face of the fence, in addition to that the applicant is proposing an 8-foot landscape strip along the perimeter of the interior lots. Within that landscape strip the applicant proposes to use two smaller variety street trees, staff would like to see the applicant replace the variety of smaller street tree with a larger variety of street tree along the interior lots and possibly the smaller street trees could be used on the exterior lots behind the larger variety of tree that has already been proposed.

There are 429 trees located on the site, all are proposed to be removed due to the topography of the site. The applicant has indicated that it would be very challenging to retain any of the trees on site. King County code does allow the removal of all trees as long as they are replaced. The applicant would be required to retain 94 trees, if they are not able to do so. The applicant has proposed to replace 193 trees total, which does meet the requirement for King County tree replacement.

King County code requires that the applicant provide recreation on site. On this site, the applicant is required to provide 390 square feet of recreation space per lot, approximately 38,000 square feet of recreation area has been provided within the proposed detention pond tract. There is a walking trail that surrounds the pond, which will include benches, tables and umbrellas as well as passive recreation for small children. The applicant should also provide a public benefit on the pathway due to the needs of the school children in the area. The pathway should be dedicated as a public easement. There would also be a fence on the interior of the trail that surrounds the pond for safety.

Half street improvements have been proposed along 162<sup>nd</sup> Ave SE as well as dedication of a 35.5 foot right-of-way width along the eastern portion of the site for the extension of 164<sup>th</sup> Ave SE. In the northeast portion of the site a turn around has been provided, a portion of which is located on the Issaquah School District property. An agreement is in place until such time as the road would be extended to the north. The internal road system

connects 162<sup>nd</sup> Ave SE to 164<sup>th</sup> Ave SE which satisfied the secondary access requirements. Further there is an alley that has been proposed for the interior Lots 31-49.

A Transportation Mitigation Fee would be imposed on this project and a School Mitigation Fee payable to the Issaquah School District would be imposed as well.

The ERC issued a mitigation measure requiring the applicant to comply with the 2005 Surface Water Design Manual, which will accommodate some of the concerns in this area.

A Homeowner's Association should be created to maintain all common improvements on site.

The applicant further should maintain all landscaping and all amenities provided within Tract A from the fence outward and the City of Renton would be responsible for the storm pond located from the fence inward.

Water service to the site is being provided by Water District 90, the applicant would be required to provide approved plans from Water District 90 prior to engineering permit approval. The applicant has received a Certificate of Water Availability. The applicant would further be required to provide an 8" line for sewer within 162<sup>nd</sup> Ave SE and extend to all lots as required.

Wayne Potter, Barghausen Consultants, 18215 72<sup>nd</sup> Ave S, Kent 98032 stated the project team was with him that included the landscape architect and engineers who were at the hearing to answer any questions.

This project has a long history through King County, pre-application meetings, site visits and working with various members of King County and the City of Renton. This project was started in 2005 and they are excited about the project being presented today. The developer has thoughtfully gone through every detail to come up with a project that would lessen impacts with respect to the additional 11 lots of the TDRs.

In general they are satisfied with the conditions placed on this project by Staff; however, there are a few things that he wanted to bring to the attention of the Examiner and possibly give some clarifications. Regarding the setbacks, it appears that the City is considering in the future allowing flexibility with respect to front yard porches that would potentially encroach typical front yard setbacks. This is what they have tried to do with this project, varying elevations, modulations with buildings making sure there is not just a row of houses with the exact same setbacks. It appears that the City is considering allowing decks/porches to encroach the setbacks to provide another esthetic element to the streetscape. If this project is approved today and if this ordinance should be approved that it would become applicable to this project.

The Examiner stated that he could not guarantee that, they are present today under existing code and existing code has certain provisions. Whether you can modify the plat after the fact that would have to be explored with Staff. The main question or problem would be the precedence it creates. Everyone could come in and say they wanted their plat to abide by these standards, but if the standards are relaxed in the future then they want those standards to apply. The standards could vary from week to week or month to month. That flexibility could cause many problems.

This plat has the advantage of the King County Code and now you are looking to take advantage of the current plus potential changes in the Renton code.

The lots could achieve a variety of looks with the use of landscaping, mixing larger and smaller trees and creating a designer look.

Mr. Potter continued with a minor correction on page 10 of the Staff Report, under Surface Water, second paragraph it indicates that there is a proposed storm water vault located in Tract A. It is a pond and not a vault.

Also with respect to the revisions to Condition 1, with regards to TDR's, Mr. Halinen would address that matter later. There would be no problem in adding the language to the condition that they would meet the King County requirements for TDR's outlined in their code.

The Examiner also noted a correction to the Staff Report on page 4 of 12, the consistency with Short Plat criteria is mentioned twice and it is obviously Preliminary Plat and not Short Plat.

Mr. Potter continued regarding some items that were discussed and provided some clarification. They have met with CARE and gone through this project, made revisions based on comments received from them that appeared to be applicable. They also met with adjacent property owners to the south, they met with the developer of Liberty Gardens to discuss projects and try to work together for a good product in this area.

Many of the improvements made in the project not only meet but exceed King County requirements as well as requirement of the City of Renton. They have varied the lot widths with good depths and variations in setbacks. There are also additional landscaping opportunities, there would be a separation from the back of the curb to the sidewalk for safety reasons as well as additional landscaping. With regards to providing more landscaping for the alley load lots, on the front of these lots (31-40) because of the grade separation, they have put a wall back from the sidewalk and added additional landscaping so the wall is not right up to the back of the sidewalk.

They have exceeded the requirements for King County for open space and recreation. The storm pond design includes passive recreation and active recreation and put them together to create a space where the open pond would be a feature to be enjoyed by not only the people within the plat but also the community. With that, they have increased the landscaping, have proposed to move trees and create meandering sidewalks along 162<sup>nd</sup> and 164<sup>th</sup> trying to take advantage of the 20' landscaping on both of those main streets and providing fencing with trellis design. The landscaping plan is very detailed and construction ready. They have worked diligently with Liberty High school to make the best use of the turnaround. There would be a modulated fence along 164<sup>th</sup> that will break up the look of a long straight fence that is seen in most developments. Every other lot will have the fence modulated and enhanced with landscaping and the other lot with a trellis to try to lessen the impact of a straight wall.

Regarding the trees, they have looked at the landscape to see if there were pockets of trees that they could try to save to incorporate in this plat. There is a challenge when it comes to design, the size of these lots and 30' of elevation drop from the northeast corner to the southwest corner. In doing so, they have elected to increase the landscape on the project to exceed the replacement tree requirements of King County to try to lessen that impact. They are working with native trees and they feel confident that they have accomplished that goal.

There has been some discussion about an agreement with three developers, at the very beginning of this project when the plan was submitted to King County, a letter was sent to all three projects, Threadgill, Liberty Gardens and Cavalla. Threadgill received preliminary plat approval through King County prior to annexation. Liberty Gardens had received SEPA determination and was within weeks of having a hearing before the King County

Hearing Examiner prior to the annexation. King County met with all three developers to come up with a solution to secondary access. Their concern was in and out of this area. The three developers agreed as a whole they needed to come up with a solution. In the end, prior to annexation, 162<sup>nd</sup> was the preferred access going directly south in front of Cavalla and Liberty Gardens. Through meetings with the City and going through designs and because of the impacts to several sensitive areas, it was determined that the less impact and the preferred alternative for extension and secondary access would be 164<sup>th</sup> and that is why revisions were made. The agreement leaves room for an alternative access, 167<sup>th</sup> Ave SE, and if that were determined to be better, all three parties have agreed to follow that recommendation.

David Halinen, Attorney for applicant provided a copy of a portion of the King County code that deals with Transfer of Development Rights, Chapter 21a.37. He further provided copies of two Density Credit Transfer Agreements; one involving the purchase of nine such credits and the other the purchase of two credits for the total of eleven that are being contemplated in this plat.

Gwendolyn High, 155 Yakima Avenue, Renton 98059 appeared on behalf of CARE stated that they were her neither in support or opposition of this project. This will happen and they would like to present some clarifications for review.

They are pleased with the current project proposal. They presented a list of conditions that have been offered by the applicant they are requesting that they be specific conditions of approval including lot variation, setbacks, landscaping, street plan and access to the pond.

The main matter is the TDR, this community is sensitized against TDRs due to the poor implementation to date and the negative impacts that the residents have suffered as a result. With this project the community will have absorbed about 20% of all TDRs transferred in King County since the first TDR was sold in 1999. Until now there has been no provision of infrastructure or amenity improvements to appropriately accommodate and mitigate the increased negative impacts. Many discussions have taken place and many neighbors still believe that TDRs must be opposed as a matter or principal regardless of the specific proposal. The community has more to gain from Cavalla being built as currently proposed than would be lost if the project were to be built to the lower King County density standards. The community would not challenge the use of TDRs at this time due to the amenities that the development proposes.

They would like to request the following conditions; signs to be placed at the access points of the walk around the storm pond so that the public knows they are welcome, opening hours and rules of behavior should be included in that signage. It appears that half street improvements for 162<sup>nd</sup> and 164<sup>th</sup> are inadequate, half streets are only adequate for service of 35 dwellings or fewer, this plat is proposed at 39 and Liberty Gardens has been approved at 36 for a total of 85 units. It appears that full street improvements for 162<sup>nd</sup> and 164<sup>th</sup> would be required. There appears to be no conceptual drainage plan for this development, King County requires a curb on one side for drainage and therefore, the City's stormwater and traffic division review the proposed plat and make sure the alley design meets the intent and purpose of both road standards and drainage standards. CARE hopes that the implementation of this project will be a powerful and effective example of the proper use of TDRs. The transfer process must be complete and correct. It was requested that Staff Condition 1 in the written report to the Hearing Examiner be modified to require conformance with all necessary applicable portions of King County Code, specifically 21a.37.080, 21a.37.130 and 21a.37.140. It is important that what is offered actually happens.

Dave Petrie, 811 S 73<sup>rd</sup> Court, Des Moines 98198 requested that the Hearing Examiner recommend to the Renton City Council that the Cavalla plat be revised and returned to the 38 lot configuration that was submitted under King County in January 2006. It would then be fully compliant with the R-4 Renton Comprehensive Plan. The increase in density would damage his property because of the lower cost and smaller lots, the greater reason was the effect on the neighborhood. Mr. Petrie read a statement regarding his involvement with the TDR matter. He is a developer and was invited to a meeting with the planning commission regarding the use of TDRs, he was the only developer that showed up for the meeting. He further related events that took place with the Evendale development. It appeared that the planning commission was against TDRs and he fully supported them.

The Examiner asked for an explanation of the impacts and why he believed this project was inappropriate.

Mr. Petrie continued stating that he liked the landscaping however, the density is an issue, he wanted to see the development go back to the original 38 lots and still have all the amenities. Originally Renton wanted 164<sup>th</sup> as the major arterial, 162<sup>nd</sup> is the better route, but that had impacts on the environment. He proposed an underground vault and was criticized for that suggestion.

Debi Eberle, 18225 SE 147<sup>th</sup> Street, Renton 98059 stated that she is the vice president of CARE and a Watershed Steward. She reported that the yellow flag iris is on the noxious weed list and should not be used in the landscape in this development. Native plants should be used whenever possible. The system needs trees that feed bugs and keep fish alive. The open space, wetland area and detention pond are good for the environment and they need to be kept open to the public. TDRs require a delicate balance and there needs to be a balance and it needs to work correctly.

Doris Yopez, 16444 SE 135<sup>th</sup> Street, Renton 98059 stated that she lives near the development and she was concerned about the tree retention. There are two cedars that are 34" in diameter, they are older forest trees. There are also some Hemlocks that are very large as well located in the northwest corner. She does not want to see clear cutting it causes erosion when land is cleared this way. This would have the potential to pollute the Cedar River. She was not in favor of TDRs and would like to see the plat go back to the original 38 lots.

In the planting area that also is some bamboo and holly, she is not sure of the type of bamboo intended to be planted, the non-invasive type would be alright, but the invasive type spreads and is more difficult to get out than blackberries. They need to keep native plants in the pond area.

Gary Norris, Transportation Engineer, PO Box 547, Preston stated that at the time previous traffic counts were conducted there was a lot of construction activity in the area and the construction activity was generating a lot more traffic that was anticipated from the single family developments. As the construction has calmed down, the traffic volumes have receded and the economic impact has had an impact on traffic as well.

The intersections in the area can handle the additional lots of this particular project.

Kayren Kittrick, Community and Economic Development stated that the sewer on 162<sup>nd</sup> is open to be on either 164<sup>th</sup> or 162<sup>nd</sup> it is gravity and engineering will determine which way it will go. The temporary turnaround is needed because of the distance, it may or may not go away the Issaquah School District has the available frontage that they could develop the whole road, they could do their half. They have been exploring the

possibility of extra parking for the ball field. The easement should not be finalized until just before the final plat because it needs to match what is actually built.

The Examiner stated that a condition was needed to state that the temporary turnaround is being constructed with this project.

Kayren Kittrick continued stating that the ERC stated the use of the 2005 Manual for the drainage issues. They cannot divert any water, all water coming onto the site must be accommodated, the 2005 Manual will go a long way in resolving some of the issues or at least will not make them worse. Most of the drainage issues are on the southerly side of the property because there is a stream in that vicinity, there is some flooding on 160<sup>th</sup> as well some backing across property lines in the vicinity. It is well documented where the problems are and that will be watched very closely.

To the east and south is a Park's Department property, King County Parks will be handing that property over to the City of Renton. The City Park's Department will be going through its usual outreach process to develop the area. To clarify, both 164<sup>th</sup> and 162<sup>nd</sup> are not designated as arterials, at most they are residential collectors by their character, there is no direct access off of them very often, they are access through the residential properties. As such a half street improvement is allowed, this is actually more than a half street, it is 22 feet of pavement in their frontages and all points of connection must be a minimum of 20 feet.

A 10 minute recess was taken... returned to the record at 10:53 am

Wayne Potter stated that he was going to try to bring some clarity to some of the outstanding issues. With respect to the e-mail provided by Gwendolyn with recommendations he stated they have no problems if Staff wants to include the improvements that are part of the TDRs as conditions with the caveat that if the TDRs are not approved, those particular improvements would not be applicable.

The Examiner questioned if the TDRs were discretionary at this time or if the agreement is executed is it a fait accompli.

Mr. Halinen stated that it is a fait accompli.

Mr. Potter continued that they agreed that there would be public access to the path amenities. The half street issues were addressed by Ms. Kittrick, however, on Sheet 5 there is a cross section of 162<sup>nd</sup> Ave, King County requested that 30-feet of asphalt be provided from face of curb to the asphalt.

There are many ways to design the alley, they are open to the standard King County requirement.

The onsite and off-site drainage issues have been analyzed extensively. A Level 1 drainage analysis that was prepared and submitted was reviewed by King County at the time, they requested a Level 3 analysis. Ed McCarthy was hired to prepare that analysis, in the end they agreed to provide Level 3 drainage control and sized the pond accordingly.

The temporary turnaround, the intent is to provide a temporary easement that would stay on the adjacent property, or the option of splitting the easement on both sides of the right-of-way or providing the easement on the entire project of Cavalla. There are options, Issaquah School District has many design options and they



would be willing to work with Staff to ultimately come up with the best solution. The preference would be to flip the temporary turnaround onto the School property, in initial conversations with them, they were okay with that.

They would be willing to work with CARE to provide native plants in the landscaping. They would also look at the large cedars and Hemlocks, they will look at options again. Cedar trees are very sensitive and when removing other trees around them it could be problematic.

Ms. Timmons read her new Condition 1 to the Staff Report:

“The applicant shall perform all steps and complete all documentation necessary as required by King County Code Section 21A.37 and the City of Renton in order to process the transfer of development rights properly for this subject plat only the certificate or other valid legal document(s) must show the applicant or successor as the lawful owner of the development rights. Alternatively, the plat design shall be reconfigured to reflect the density allowable under the R-4 Zone without the TDR bonus.”

The Examiner stated that there is no plat without the TDRs. Reverting back to a 38-lot plat leaves some concerns and questions.

David Halinen stated that he had reviewed the new Condition 1 with his client and it is acceptable as drafted. Regarding the point that without the TDRs there is no plat and this would revert back to a 38-lot plat, the last sentence could be slightly modified to provide some sort of remand for further processing if in fact, the TDR approach is not ultimately utilized.

Gwendolyn High mentioned three subsections of KC 21A.37 the last two were .130 and .140 which deal with TDRs are acquired from the County's bank. These TDRs are being acquired from specific property owners not from the Bank. Mr. Halinen read from subsection b of KC 21 regarding TDR development rights.

Ms. Timmons stated that the front yard porches that were proposed by the applicant to encroach into the front yard setback would be approved by Staff as long as it does not encroach into the required setback of 10 feet for the front yards and then because of the front yards that front on the street, they are asking that the front porches do not exceed more than a 15 foot front yard setback.

A detailed landscape plan has not been approved and that a final landscape plan will have to be approved prior to the recording of the plat. They will look specifically at noxious plants as well as the overall landscape plan.

It is obvious that the City has not implemented a TDR program and that it is a very controversial topic. The project is vested to King County R-4 standards, it does have a base density of 4 du/ac and does allow the density to go up to 6 du/ac. The applicant is only proposing 5.21du/ac. It is understood that there are several concerns, they are allowed to exceed the base density of the zone.

Doris Yopez stated that Mr. Potter said that leaving some single Cedars would make them susceptible to the wind, but she would like them to look at the cluster of Cedars on the southeast corner, if those could be retained it would be good.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 11:16 a.m.

### **FINDINGS, CONCLUSIONS & RECOMMENDATION**

Having reviewed the record in this matter, the Examiner now makes and enters the following:

#### **FINDINGS:**

1. The applicant, Kolin B. Taylor, filed a request for a Preliminary Plat.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Significance - Mitigated (DNS-M).
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. The subject site is located south of SE 137th Place and east of 162nd Avenue SE and west of 164th Avenue SE.
6. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of lower density detached single family uses, but does not mandate such development without consideration of other policies of the Plan.
7. The subject site is currently zoned R-4 (Single Family - 4 dwelling units/acre). The subject site is vested under King County's zoning which is generally equivalent to Renton's designation but the standards for lot area, yard setbacks or dimensions and development standards would be judged against King County standards in effect when the application was submitted. As discussed below, the density may be altered by the Transfer of Development Rights.
8. The subject site was annexed to the City with the adoption of Ordinance 5398 enacted on August 11, 2008.
9. The subject site is approximately 9.4 acres. The site consists of two adjacent lots that abut in a north-south direction. The subject site is approximately 596 feet wide (east to west) by 656 feet deep.
10. The subject site slopes downward toward the southwest. The slopes range from approximately 2.5 percent to 12 percent and average about 10 percent. The northeast corner of the site is approximately 50 feet higher than the southwest corner. Grade and fill will be used to create level building pads and roadways.
11. The site contains 429 significant trees. The applicant proposes removing most, if not all of the trees to accommodate the grading that will occur. (see below for proposed new landscaping.)

12. In developing the subject site the applicant proposes using King County provisions that allow the Transfer of Development Rights. Those provisions allow trading or purchasing development rights attached to certain rural land and use of them in less rural or suburban or urban settings. Those rights, once transferred, reduce the potential density of the rural parcels and boost the permitted density of the receiving property. The R-4 Zone has a base density of 4 dwelling units per acre and the maximum is 6. Transfer of Development Rights (TDR) permits the maximum density of 6 units per acre. The number of lots permitted is attained by multiplying the acres, 9.4, by base density of 4, yielding a total of 37.6, or 38 lots. The applicant has proposed a TDR of 11 lots for a total of 49 lots. This creates a density of 5.21 which is less than the maximum density of 6 units per acre.
13. Staff noted that there are no qualitative criteria to allow TDR operation. If the transfer contract is finalized appropriately, then the transfer may take effect. Staff reports that the community around the project expressed opposition to increasing the density on this parcel and the applicant agreed to mitigate some of the potential impacts of increased density by exceeding the minimum standards of the King County Code. The applicant proposed increasing landscaping, passive recreational opportunities, lot design and street design. The proposal will include an enhanced detention pond area with pathways open to the general public.
14. As noted, the applicant proposes creating a 49-lot plat with one large detention tract, Tract A. Proposed Lots 1 to 10 will run along the north boundary of the subject site. Proposed Lots 11 to 17 will run along the eastern boundary of the subject site. Proposed Lots 18 to 22 and Tract A would lie along the southern boundary of the site. There would be three tiers of lots in the center of the site aligned east to west. Two tiers, Lots 31 to 40 as the southern tier and 41 to 49 as the northern tier, forming a block in north central portion of the subject site. The third tier generally located north of the detention Tract A would contain Lots 23 to 30.
15. King County Code has no minimum lot size or depth requirements but does require a minimum 30 foot lot width. The code requires a 10 foot setback for the primary structure and 20 feet for attached garages or parking areas. Other than the front yard setback, all other yards, including rear yards are required to be a minimum of 5 feet. The lots would range in size from approximately 4,040 square feet to 7,803 square feet. The plat has been designed with larger lots along the perimeter of the site to more or less mirror the larger lots normally found in the R-4 Zone. Smaller lots would be located on the interior of the plat in the new block created by the two tiers of lots with alley. The applicant proposes enlarging yards to 20 feet for the home and 25 feet for the garage for the perimeter lots and 15 feet for the interior alley-loaded lots as an offset to the greater density. The applicant also proposed larger rear yards for the interior parcels. Building height is limited to 35 feet.
16. Staff made the following recommendations to provide a more consistent streetscape:

"that the plat plan be revised to depict the following: one-half of the interior lots (Lots 31-49) provide a 10-foot front yard setback in addition to the sidewalk and landscaping provided in the right-of way and the other one-half of the interior lots provide a 15-foot front yard setback. Additionally, one-half of the exterior lots (Lots 1-30) provide a 20-foot front yard setback for the primary structure and the other one-half of the exterior lots provide a 25-foot front yard setback for the primary structure. Garages are to be setback an additional 5 feet for all front/street loaded lots. "

Staff suggested that the applicant provide at least 8 foot rear yards to accommodate backout room but that the larger rear yards proposed by the applicant were unnecessary. There are no code limitations on larger yards.

17. Access to the subject site would be via 162nd Avenue along the west and 164th Avenue along the east. Both of those streets will be improved with half-street improvements and conveyed to the public with dedications. Both streets are considered residential collectors and are not subject to arterial street standards. Two west to east roads would enter the plat from 162nd Avenue and intersect with a new north to south road that swings east to 164th. An alley would run west to east in the middle of the new block to the rear of Proposed Lots 31 to 49. 164th Avenue would end in a turnaround at its northern terminus. The proposed turnaround would be located on 3rd party property owned by Liberty High School - Issaquah School District. A tentative agreement has been negotiated since the improved street and turnaround would accommodate traffic at the school. If the agreement were not executed, the turnaround would have to be accommodated on the subject site. Staff recommended that no access be allowed directly to 162nd or 164th. An agreement between property owners was intended to improve circulation along 162nd and 164<sup>th</sup> but the agreement has been abandoned. It appears that the applicant proposes upgrading 164th to the turnaround and providing through access across its plat with its new east-west streets.
18. The applicant will be using Renton standards for street improvements including vertical curbs, an 8-foot planter strip and on-street parking. Staff has recommended that the applicant pay a Traffic Impact Fee (King County) or Mitigation Fee (Renton) of \$75.00 per net new trip which equates to \$35,169.75 (9.57 trips/home x 49 homes).
19. King County Code (as noted above, the applicant is vested to and bound by King County Code) requires one tree for every 40 feet of street frontage along all public streets. The applicant proposes complying with those requirements as well as providing visual barriers using 10-foot landscape easements parallel to 162<sup>nd</sup> and 164<sup>th</sup> Ave SE. The applicant proposes planting 193 replacement trees along the roads and yards. This barrier would also contain a "good neighbor fence" that is modulated along 164<sup>th</sup> Ave SE. The applicant also proposed an 8-foot landscape strip along the perimeter of the tiered lots in the middle of the site. The applicant proposes a meandering sidewalk along both boundary streets. Staff suggested smaller street trees be blended with the larger trees. Staff noted that the applicant's landscaping proposal exceeds the standards required by King County. The applicant proposes relocating some of the larger ornamentals and may be able to protect other large trees where possible.
20. Code requires 390 square feet of recreation space for each home in this plat or 19,110 square feet for the entire plat. The detention tract will contain approximately 38,400 square feet or double the required amount. As noted this area will be open to the general public.
21. The subject site is located within the Issaquah School District. Developments within that school district are required to pay an impact fee on a per lot basis. The fee is assessable at the time of building permit approval and is \$6,021.00 per lot.
22. The development will increase traffic approximately 10 trips per unit or approximately 490 trips for the 49 single family homes. Approximately ten percent of the trips, or approximately 49 additional peak

hour trips will be generated in the morning and evening. The TDR will enable eleven (11) additional dwellings. The 11 homes would generate approximately 105 additional trips per day or approximately 10 additional trips during the rush or peak hours. A recent traffic analysis shows traffic in the area has decreased and that the Levels of Service (LOS) for five critical intersections have improved and accidents numbers decreased. Some of the decrease might be due to the current economy but some may be a general reduction.

23. Stormwater will be channeled to the natural low spot, the southwest corner of the site where it will be retained in an enhanced detention pond and open space tract, Tract A. An analysis shows that there are downstream problems and the City imposed restrictions and containment based on the 2005 King County Surface Water Design Manual for flow and quality. The applicant will be required to comply with that manual's landscaping requirements.
24. Sewer service will be provided in 162nd Avenue and/or 164th whichever is more appropriate.
25. Water District #90 provides water service to this area. The water service will have to meet City of Renton standards for flow and fire protection. Appropriate permits from both agencies will be required.
26. There are some neighbors who are opposed to increasing the density of the subject site. The reasons expressed were that the smaller lots proposed are not compatible with the community, the increased housing generates a larger population and additional vehicle trips and the increased density makes it less likely to preserve natural features and/or trees. There was also concern about some of the selected landscaping materials.

#### **CONCLUSIONS:**

1. The proposed plat with its increased density possible with an appropriately executed TDR appears to serve the public use and interest. This is not to say that any increase in density in an area slated for lower density single family uses is appropriate even when the result is protected farm land or critical areas. While this office is not entirely convinced it is appropriate to shift density to an area zoned for lower density detached single family housing, the result in this case does not cause an egregious density increase and has been well-integrated into the lower density community by embedding the smaller lots in a surrounding envelope of larger conforming lots. In addition to the layout and alignment of the proposed lots, the applicant has increased the perimeter landscaping thereby buffering the surrounding uses from the increased density. The applicant will also be providing open space in its enhanced treatment of its stormwater detention system and this public space will be available to the general public as well as residents of the plat.
2. The development of the plat with or without the increased density will obviously change the complexion of the area. There will be more comings and goings and more people. Wooded open space will be converted to housing and manicured landscaping. These changes were anticipated by both the Comprehensive Plans and the Zoning both under King County and the City. Adjoining or nearby property has already been approved for increased development. While the density increase of the proposal will generate additional traffic, the 11 new homes will only nominally increase traffic during peak hours, the most pressing time for traffic. The 11 homes will add approximately 10 additional trips to area roads and those trips will spread out in various directions from the project. In addition, the

applicant will be improving areas roads and connecting roads that were substandard. The applicant will be improving access to Liberty High School's facilities.

3. Clearly, the increased density may only be permitted if the appropriate agreements or contracts are executed and the preservation tradeoff comes to fruition. Staff recommended that the plat be subject to such final execution. Clearly, the proposed plat can only go forward as proposed. If the TDR is not finalized, this plat would have to fail since no one has had an opportunity to review a layout with eleven fewer lots. The entire plat would have to be redesigned.
4. The development of the proposed plat will increase the tax base of the City. The applicant will be paying some mitigation or impact fees but the increased taxes will also offset the impacts of this development on the City and its services.
5. The enhanced design of this plat is creative. It envelops smaller lots inside a wrapper of larger lots that appear to be compatible with the larger lots in surrounding plats. The applicant has increased the perimeter landscaping and enhanced landscaping and proposed larger yards to provide a more spacious presentation. The detention tract will serve a dual purpose by providing for stormwater control while also providing open space for both residents and the community. Clearly, there is no way that introduced landscaping supplemented as it is, will replace the natural environment now found on the subject site. One aspect of developing property that cannot be avoided is that homes and driveways and access roads require the removal of existing vegetation and in some cases the natural contours of property. Again, such consequences were indirectly forecasted by the goals and objectives found in Comprehensive Plans and Zoning Code that allow housing and encourage housing and density in growing urban and suburban areas. This plat appears to provide a reasonable compromise.
6. Staff had suggested changes to some of the proposed yards. Since there is no limitation on larger yards, the applicant is free to work within building envelopes that meet the minimum standards and may provide larger yards. The applicant may not provide smaller setbacks than code permits and any porches, overhangs, bays or eaves must meet code provisions.
7. Staff suggested smaller street trees be blended with the larger trees along the streets. This would provide more visual depth and variety to the wider parking strips and should be accomplished.
8. The applicant should attempt to preserve some of the larger specimen trees where possible. All introduced landscaping should comply with standards for noxious weeds.

**RECOMMENDATION:**

The City Council should approve the 49-lot plat subject to the following conditions:

1. The applicant shall perform all steps and complete all documentation necessary, as required by King County Code section 21A.37, and the City of Renton, in order to process the Transfer of Development Right's properly for this subject plat only. The certificate or other valid legal document(s) must show the applicant or successor as the lawful owner of the development rights. If the agreement is not appropriately executed and finalized the plat shall be null and void and a new application meeting code and density requirement would be necessary.

2. The applicant shall obtain a demolition permit and all required inspections be completed for the removal of the existing residence prior to the recording of the plat.
3. Supplemental materials including a revised plat plan, a letter outlining all recommended setbacks and a draft of the CC & R's for the Homeowners' Association, with an inclusion of the setback requirements of the plat; shall be submitted to and approved by the Current Planning Project Manager prior to the recording of the plat.
4. The applicant shall replace the small street trees along the perimeter of the interior lots with a larger variety of street tree. The applicant shall use smaller street trees, in addition to the larger single tree, along the perimeter of the exterior lots.
5. The applicant shall be required to provide a detailed tree retention plan with the engineering review application. The tree retention plan shall be reviewed and approved by the Current Planning Project Manager prior to engineering permit approval. The applicant shall attempt to preserve some of the larger specimen trees where possible. All introduced landscaping shall comply with standards for noxious weeds.
6. The applicant and Homeowners Association shall allow for public use of the walking path (providing a pedestrian connection from 162<sup>nd</sup> Ave SE and 164<sup>th</sup> Ave SE) and other recreation features within the storm pond (Tract A). Language to this effect shall be placed on the face of the plat and included in the Codes, Covenants & Restrictions (CC&R's).
7. Access for Lots 31-49 shall be limited to the proposed alley only. There shall be no direct access to either 162nd Avenue or 164th Avenue from any lot in the plat.
8. The applicant shall pay a Transportation Mitigation Fee based on \$75.00 per net new average daily trip attributed to the project. 49 lots are expected to generate approximately 9.57 new average weekday trips per each lot. The fee for the proposed plat is estimated at \$35,169.75 (\$75.00 x 9.57 trips x 49 lots = \$35,169.75) and is payable to the City prior to the recording of the final plat.
9. The applicant shall establish a homeowners' association for the development, which would be responsible for any common improvements and/or tracts within the plat prior to final plat approval.
10. A note shall be placed on the face of the plat stating that the Homeowners' Association will

maintain all landscaping and amenities within the proposed storm pond from the fence outwards and the City will maintain the storm pond from the fence inward.

11. The applicant shall create a turnaround at the north terminus of 164th Avenue. The terminus may be located on the adjacent school district property or be located on Proposed Lots 10 and 11 or portions thereof and those two lots may be combined if necessary to create an appropriate turnaround and setbacks for a home on the lot or lots.

ORDERED THIS 3<sup>rd</sup> day of November 2009.

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FRED J. KAUFMAN  
HEARING EXAMINER

TRANSMITTED THIS 3<sup>rd</sup> day of November 2009 to the following:

Mayor Denis Law	Dave Pargas, Fire
Jay Covington, Chief Administrative Officer	Larry Meckling, Building Official
Julia Medzegian, Council Liaison	Planning Commission
Gregg Zimmerman, PBPW Administrator	Transportation Division
Alex Pietsch, Economic Development	Utilities Division
Jennifer Henning, Development Services	Neil Watts, Development Services
Stacy Tucker, Development Services	Janet Conklin, Development Services
Marty Wine, Assistant CAO	Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100 of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., November 17, 2009.** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$250.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., November 17, 2009.**



**If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.**

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.